BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Comprehensive Computer Services, Inc. Dist. B01, Block 58, Parcel 00227 Residential Property Tax Year 2005	)) Shelby County))

INITIAL DECISION AND ORDER
ON REMAND DISMISSING APPEAL

Statement of the Case

The administrative issued an initial decision and order on June 13, 2006 dismissing this appeal for lack of jurisdiction. The taxpayer appealed to the Assessment Appeals Commission. On May 11, 2007, the Assessment Appeals Commission remanded the appeal to the administrative judge. Pursuant to the Order of Remand, the administrative judge conducted a second hearing in this matter on June 7, 2007. The taxpayer was represented by David C. Scruggs, Esq. The assessor of property was represented by John Zelinka, Esq.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The sole issue before the administrative judge concerns jurisdiction. This issue arises from the fact the disputed appraisal was not appealed to the Shelby County Board of Equalization. Instead, the taxpayer filed a direct appeal with the State Board of Equalization which was received on February 28, 2006.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

> The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet

> them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc., Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). *See also John Orovets*, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond its control prevented it from appealing to the Shelby County Board of Equalization.

The taxpayer concisely summarized the reasons for not appealing to the Shelby County Board of Equalization in an attachment to the appeal form which provided as follows:

> **Cause for no appeal at the County Level**
>
> The property was purchased in June of 2005 by out of state buyers who were unaware of the tax appraisal, assessment, and appeal procedures of Shelby County, Tennessee. The following are a few other causes/explanations for the expiration of time to appeal at the County level before action could be taken:
>
> 1. Relocation of the company headquarters to Tennessee from California
> 2. Relocation from a large facility in California to a small office in California
> 3. The time required for the buyer to become aware and learn the laws, deadlines, and tax procedures of the state of Tennessee
>
> The buyer was also unaware that the assessment of the property was linked to the manufacturing of the previous owner, Brother Industries, and was unaware that the change needed to be brought to the attention of the County Assessor's Office.
>
> Due to the relocations, and the date of purchase, the current owner did not receive notice of assessment or the tax bill from the County until after the deadline for appeal had expired at the County level.
>
> [Emphasis in original]

In addition, Ms. Short testified the taxpayer did not realize that the taxes it paid at closing were prorated. Ms. Short also noted that the owner of subject corporation is a 74 year old gentleman from Korea.

Respectfully, the administrative judge finds the taxpayer failed to establish that it was prevented from appealing to the Shelby County Board of Equalization due to a circumstance beyond its control. The administrative judge finds that ignorance of the law has repeatedly been rejected as a basis for finding reasonable cause. For example, in *Transit Plastic Extrusions, Inc.* (Lewis Co., Tax Years 1990 & 1991) the Assessment Appeals Commission rejected a similar argument reasoning in relevant part as follows:

> The assessor testified that the standard reappraisal notice of assessment change was mailed in March of 1990 to the company at its proper address. The administrative judge found that the failure of the taxpayer to appeal was the result of a lack of understanding of property tax valuation and appeal procedures by the taxpayer's principal owner and staff. The administrative judge found that the "reasonable cause" statute was intended to relieve a taxpayer from forfeiting appeal rights due to circumstances beyond the taxpayer's control, such as illness, rather than from mere inadvertence, lack of knowledge, or neglect. We agree with this conclusion. A taxpayer who has been properly notified of an assessment change, as was the case here, cannot prevent the imposition of reasonable deadlines for appeal by pleading the press of other business or lack of awareness of the manner or necessity of appeal. . . .

Final Decision and Order at 2. Similarly, in *Gerald D.F. Hollenbeck* (Shelby Co., Tax Years 2001-2003) the Commission ruled in pertinent part as follows:

> The only reason offered for the failure to appeal the assessment first to the county board of equalization, was that the taxpayer did not understand or was not aware of the requirement.
>
> . . . The testimony in this case does not provide a basis for a finding of reasonable cause. . . .

Final Decision and Order at 1.

The administrative judge would also note that the taxpayer had at least inquiry notice of the appraisal at the closing when the taxes were prorated. The administrative judge finds that Administrative Judge Helen James discussed this type of notice in *Roger D. Payne* (Shelby Co., Tax Years 1995 & 1996). Judge James declined to find reasonable cause reasoning that "[i]t is disingenuous to believe that an astute businessman, such as the taxpayer, would not have inquired as to the assessed value of the property at the time of the purchase." Initial Decision and Order Concerning Jurisdiction at 3. Respectfully, the administrative judge finds that a corporation purchasing real property for $2,800,000 should presumably be aware of the assessor's appraised value for ad valorem tax purposes.

The administrative judge finds that neither the administrative judge's ruling in *Chow Young Jr. and Maggie Emerson* (Madison Co., Tax Years 2005 and 2006) ["Chow Young"] nor *Metropolitan Government of Nashville and Davidson Co. v. Ragsdale*, Davidson Chancery No. 04-1811-1V, April 18, 2005) ["Ragsdale"] support taking jurisdiction in this particular case.

With respect to the administrative judge's ruling in *Chow Young*, counsel quotes from the decision as follows:

> The administrative judge finds that the Assessment Appeals Commission has found jurisdiction when a post-assessment date

> buyer is unaware of an assessment change because the notice was sent to the owner of record as of January 1 of the tax year.

Inexplicably, counsel seemingly ignores the prior paragraph of the administrative judge's ruling which provides as follows:

> The administrative judge finds Ms. Emerson began contacting the assessor's office on or about April 15, 2005 concerning the *2004* appraised value of $1,079,000 noted in Mr. Whalley's appraisal report. The administrative judge finds that the taxpayers first became aware of the new appraisal for 2005 on November 21, 2005 when the tax bills were forwarded to them by the previous owner. As explained in the detailed chronology of events summarized in exhibit #9, the taxpayers' dealings with the assessor's office dragged out until February 2, 2006 and culminated in the filing of this appeal on February 14, 2006.

Suffice it to say, the taxpayer in *Chow Young* began contacting the assessor's office prior to the county board even convening for tax year 2005.

With respect to *Ragsdale*, counsel for the taxpayer seemingly takes the position that reasonable cause exists anytime a property is purchased after the assessment date and prior to the adjournment of the county board of equalization. The administrative judge respectfully disagrees.

The administrative judge finds that a determination of whether reasonable cause does or does not exist in particular case is a function of the facts unique to that case. For example, in *Ragsdale* the Assessment Appeals Commission concluded as follows:

> We find no basis in the facts of this case for concluding that Mr. Ragsdale should have known of the assessment change any earlier than the date he was sent [a "courtesy" tax notice in November or December].

As previously noted, the administrative judge finds that the taxpayer in this particular appeal had at least inquiry notice of the appraised value when taxes were prorated at closing. Moreover, the administrative judge finds it reasonable to assume that a corporation purchasing real property for $2,800,000 will exercise due diligence and ascertain the assessor's appraised value for ad valorem tax purposes.

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

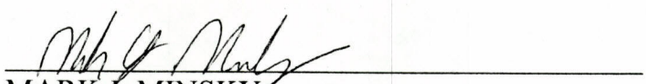
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 26th day of June, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: David C. Scruggs, Esq.
John Zelinka, Esq.
Tameaka Stanton-Riley, Appeals Manager